

## **complaint**

Mr G complains that NewDay Ltd rejected his claim under Section 75 Consumer Credit Act 1974 in respect of second hand car.

## **background**

In September 2016 Mr G bought a car at a cost of £2,499 from a garage I'll call C, with finance provided by NewDay. After a few days an ABS warning light indicated there was fault and Mr G took the car back to C which carried out a repair. The fault reoccurred in October and the car was returned to C and it attempted another repair. This reoccurred in December and January.

Mr G says that the garage didn't provide any paperwork to support the attempted repairs, but he provided details of calls made to it around the time of each repair. Later he also had problems with the handbrake which he had repaired. C offered him a warranty in December 2016 and the January repair was carried out under this. In March 2017, when it broke down again Mr G took it off the road. For the periods the car was in for repair Mr G hired a replacement and the invoice he has submitted shows he incurred £885.85.

NewDay rejected his claim and complaint and so he brought the matter to this service. It was considered by one of our investigators who recommended it be upheld. Initially the investigator thought Mr G had done a significant number of miles with the car, but it became apparent that this wasn't the case and the car had done only some 5,000 mile since the last MOT in May 2016.

The investigator was persuaded that the car had been in for repair on numerous occasions despite there being no documentation from the garage. He reviewed Mr G's phone bills which he believed corroborated Mr G's claims. He also noted C had given Mr G a warranty in December 2016 which indicated there had been some issue with the car. He didn't think the issue of the handbrake was New Day's responsibility, but he believed the car hadn't been fit for purpose at the point of sale and so there had been a breach of contract.

He recommended NewDay:

- refund £2,499 to Mr G plus 8% simple interest from the date of purchase to the date of settlement. He said he would normally consider a deduction for the usage Mr G had of the car. But given the hire costs Mr G paid when the car was being repaired, he didn't think this was appropriate.
- arrange to take possession of the car at no cost to Mr G.

NewDay didn't agree and said it would be prepared to cover the cost of repairs. The investigator said he was satisfied the garage had made several attempts to effect a repair without success. It also clarified its handling of Mr G's claim and said it hadn't said his situation fell outside Section 75 as the investigator had suggested.

## **my findings**

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

This complaint has been submitted as a claim under section 75 of the Consumer Credit Act 1974. Section 75 offers protection to customers who use certain types of credit to make purchases of goods or services. Under Section 75 the consumer has an equal right to claim against the provider of the credit or the retailer providing the goods or services, if there has been a misrepresentation or breach of contract on the supplier's part.

It is regrettable that there are no records from the garage showing the work it had done. However, Mr G has set out the events in some detail and supported these with evidence of frequent calls to C. I am satisfied that the car was returned on at least four occasions to repair the problem with the ABS. This is supported by the fact that C offered Mr G a warranty several months after he bought the car. I also believe the fact that Mr G took the car off the road just before it was due a MOT adds weight to the view it had a significant problem.

I recognise the car was some nine years old and had done a reasonable mileage, but I consider this recurring fault to be more than just reasonable wear and tear. Therefore I am satisfied that there was a breach of contract and it falls within Section 75. I would usually agree that C should be allowed to effect a repair, but as the garage had tried to do so four times I don't think it would be right to allow yet another opportunity.

Therefore I find myself in agreement with the investigator. It is clear Mr G has had limited use of the car and he has had to fund alternative means of transport. Therefore it seems only reasonable that NewDay refund the whole of the cost plus interest as set out above.

#### **my final decision**

My final decision is that I uphold this complaint and I direct NewDay Ltd to pay redress to Mr G as set out above. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 6 August 2018.

Ivor Graham  
**ombudsman**