

## **complaint**

Mr W complains that NewDay Limited won't refund to him the money that he paid for a car. His complaint is made against NewDay under section 75 of the Consumer Credit Act 1974.

## **background**

Mr W used his NewDay credit card in March 2016 to pay for a used car. The car's mileage at that time was about 90,000. He experienced some problems with the car soon afterwards – and the dealer had two unsuccessful attempts at fixing the car but wasn't able to resolve the issues. So Mr W complained to NewDay under section 75 in June 2016. It didn't respond to his complaint so he arranged for the car to be inspected by an independent expert in August 2016 and he then sold the car. NewDay rejected Mr W's complaint in November 2016 so he complained to this service.

The adjudicator recommended that this complaint should be upheld in part. He said that the expert's report commented on multiple issues with the car – many of which could be seen to result from general wear – but didn't give an opinion as to whether the issues were present prior to the point when Mr W bought the car or whether the car was of unsatisfactory quality at that point. But he believed, on balance, that there was an issue with an oil leak prior to the point that Mr W bought the car. And he said that he would normally ask the finance company to either cover the cost of repair or reimburse the customer for the cost of the car and to take possession of it. As Mr W had sold the car before NewDay had an opportunity to see the expert's report (and before he complained to this service) he couldn't recommend either of those remedies. He recommended that NewDay should cover the cost of the expert's report – and he asked Mr W to provide evidence of the cost. But he didn't agree that it was fair to ask it to refund the difference between the amount that Mr W had paid for the car and the amount that he sold it for.

Mr W has asked for his complaint to be considered by an ombudsman. He says, in summary, that;

- the onus is on the dealer to prove that the faults weren't present at the point of sale and after 28 days it has one chance of repair and then the customer is entitled to a full refund;
- oil was leaking onto the braking system so was dangerous and he made a statutory off-road notification to the DVLA;
- all of the faults identified in the report should be deemed to have been present at the point of sale (unless proved otherwise);
- he complained to NewDay and sent it the expert's report – but it did nothing for months;
- he told NewDay that he wished to dispose of the car; and
- NewDay is responsible for his financial loss.

## **my findings**

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

In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier. To be able to uphold Mr W's complaint about NewDay under section 75, I must be satisfied that there's been a breach of contract or misrepresentation by the dealer.

The expert's report has identified that the car had an oil leak. And I consider it to be more likely than not that the car had an oil leak when it was supplied to Mr W. But Mr W sold the car before NewDay had responded to the report – and before he had complained to this service. I would normally expect NewDay to be given an opportunity to repair the fault in these circumstances – but that isn't possible because Mr W has sold the car. And if I considered that it was reasonable for Mr W to reject the car I would expect the car to be provided to NewDay – but that isn't possible either. I'm not persuaded that there's enough evidence to quantify any financial loss that Miss W has suffered as a result of the oil leak. So I find that it wouldn't be fair or reasonable for me to require NewDay to pay any compensation to Mr W for his financial loss. But I consider that it would be fair and reasonable for NewDay to reimburse Mr W for the cost of the report – provided that he's able to produce a receipt – or other acceptable evidence – to show the cost of the report.

NewDay says that it received a letter from Mr W in June 2016 and that it acknowledged it in July 2016. It says that it asked Mr W for further information and wrote to him again at the end of July 2016 but no response was received from Mr W. So it says it rejected his claim in November 2016. But it says that it's prepared to offer £75 to Mr W. I consider that to be fair and reasonable in the circumstances – and I'm not persuaded that a higher amount of compensation is justified.

### **my final decision**

For these reasons, my decision is that I uphold Mr W's complaint in part. In full and final settlement of it I order NewDay Limited to:

1. Reimburse Mr W for the cost of the expert's report on receipt of acceptable evidence of that cost.
2. Pay £75 compensation to Mr W.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 6 July 2017.

Jarrold Hastings  
**ombudsman**