

complaint

Mr N complains that a car he bought and paid for using his Lloyds Bank Plc credit card wasn't of satisfactory quality or fit for purpose, contrary to the Consumer Rights Act 2015. He brings this complaint under section 75 of the Consumer Credit Act 1974.

background

I issued a provisional decision on this complaint on 3 October 2018, a copy of which is attached to and forms part of this decision.

Mr N said that because of the deteriorating condition of the car, he had accepted an offer to sell it as it was for £700. So he no longer owned the car, or was able to surrender it to Lloyds.

Subject to that, he was willing to accept my provisional decision, but with the payment from Lloyds being reduced by the £700 he had received - from £4,119 to £3,419, plus the compensation of £350 Lloyds had previously offered him but which remained unpaid.

Lloyds accepted my provisional decision. It said that in the changed circumstances it was willing to pay Mr N £3,419 plus the compensation of £350.

my findings

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

Both Mr N and Lloyds have accepted my provisional decision, subject to the amendment of the payment and the car no longer being available. With those amendments, I see no reason to depart from my earlier conclusions.

my final decision

My decision is that I uphold this complaint. I order Lloyds Bank PLC to pay Mr N £3,419, plus the compensation of £350 it has previously offered for its poor handling of his complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 28 December 2018.

Lennox Towers
ombudsman

copy of provisional decision

complaint

Mr N complains that a car he bought and paid for using his Lloyds Bank Plc credit card wasn't of satisfactory quality or fit for purpose, contrary to the Consumer Rights Act 2015. He brings this complaint under section 75 of the Consumer Credit Act 1974.

background

In November 2016, Mr N bought a used car from a motor dealer I'll call "D". The car was almost 9 years old and had a recorded mileage of 112,000 miles. Mr N paid £4,119 for the car using his Lloyds Bank credit card.

He says that when he collected the car D told him he had replaced the battery as the car wouldn't start as it had been standing for a while on his forecourt. However Mr N experienced difficulties with starting the car from the outset, with the heater warning light appearing intermittently when he was driving. Then the engine management light came on permanently.

Mr N asked D to investigate and deal with the problem. D's mechanic removed the injectors and sent them for checking. However they were reported to be okay. When they were refitted, the problem continued. In May 2017 the battery failed again and was replaced by D.

When the car was serviced after nine months, a faulty camshaft sensor was diagnosed which was thought might be causing the problem. This was replaced, but the problem quickly reappeared. Mr N wrote to D rejecting the car as being of unsatisfactory quality in accordance with the Consumer Rights Act 2015. When he got no response, he complained to Lloyds Bank under section 75.

At the bank's request, Mr N had the car inspected by an independent motor engineer, who reported that:

- the dual mass flywheel was worn and could be heard rattling when turning off the engine;
- the starter motor was noisy and possibly worn out; and
- the battery was failing a discharge test.

He said that in his opinion, the non-starting issue with the car was a combination of a bad battery, a worn starter motor, and a worn dual mass flywheel, causing the rpm sensor fault and in turn the car not starting properly. He estimated the cost of repairing these faults at £1,657.

Lloyds Bank reimbursed the cost of the report. However it said that Mr N hadn't provided any evidence that he raised the non-starting issue with D within the first six months of his ownership. So it couldn't say that the fault was present when Mr N bought the car, or that there was any breach of contract or misrepresentation by D for which the bank was responsible under section 75.

It did accept that its handling of Mr N's complaint had been poor, for which it paid him compensation totalling £350.

Our adjudicator didn't recommend that this complaint should be upheld. He thought the various faults Mr N had experienced were in line with the age and mileage of the car. And he noted that Mr N had covered 7,000 miles in the first 6 months of his ownership.

Mr N responded to say, in summary, that:

1. the adjudicator hadn't commented on the bank's main reason for dismissing his complaint – that he supposedly hadn't raised the non-starting issue with D within the first 6 months, which he denied;
2. he didn't agree that it was acceptable for the car, even with its age and mileage, to be supplied in a condition that it needed to be bump/jump started, or wouldn't start at all;

3. the adjudicator hadn't mentioned the independent report he had obtained. It wasn't reasonable that he should have to pay £1,657 to rectify the non-starting fault in a car which cost £4,119; and
4. he didn't think the compensation the bank had paid was sufficient given its poor handling of his complaint.

my provisional findings

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

As well as the non-starting issue, Mr N has raised a number of other issues which he says support the fact that the car wasn't of satisfactory quality when sold. For completeness, my view on the main issues raised is as follows:

- the car developed an air conditioning fault within the first six months – this is correct, but D arranged for this to be repaired under a third party warranty;
- the car suffered some damage in the course of this repair – this isn't something I can hold Lloyds Bank responsible for under section 75;
- when the car was serviced after 9 months, he had to pay for the camshaft sensor replacement, and he wasn't told the brake pads needed replaced – again I can't reasonably hold the bank responsible for these under section 75; and
- the car was supplied with non-standard wheels and tyres – I can't say this necessarily means it wasn't of satisfactory quality.

So the issues I need to decide are;

1. whether the non-starting issue was present when the car was sold;
2. if so, whether this meant the car was of unsatisfactory quality/not fit for purpose; and
3. what, if any, redress Lloyds Bank should now provide.

1. Was the non-starting issue present when the car was sold?

Mr N has provided a detailed account of the difficulties he had with starting the car from the time he bought it. The bank makes much of the fact the first written record of the problem was a mention on 10 May 2017 of the battery needing to be replaced, which was just outside the first 6 months.

I think this in itself is indicative of a problem within the first 6 months, a new battery having been fitted on delivery. However Mr N has produced further circumstantial evidence in the form of diaries and texts which support his account. And I have seen nothing to suggest D denies there was contact about the issue many times during the first 6 months.

On the balance of probabilities, I'm satisfied Mr N did raise the non-starting issue with D during the first 6 months, and that D made unsuccessful attempts to resolve it during that period. So I'm also satisfied that in accordance with the Consumer Rights Act 2015 the fault is to be treated as present when the car was sold.

2. Was the car was of unsatisfactory quality/not fit for purpose when sold?

Taking account of the age and mileage of the car at delivery, I don't think a car with the starting difficulties Mr N experienced can be said to have been of satisfactory quality or fit for purpose.

So there was a breach of the terms to this effect implied by the Consumer Rights Act 2015, and a breach of contract by D for which, under section 75, Lloyds Bank was equally responsible.

3. What, if any, redress should Lloyds Bank now provide?

Mr N gave D the opportunity to repair the car, but it failed to do so. As he was entitled under the Consumer Rights Act 2015, he then told D that he was exercising his right to reject the car and to obtain a refund of what he had paid. However D didn't respond.

I conclude that it's fair and reasonable that Lloyds Bank should now compensate Mr N under section 75 by paying him the cost of the car - £4,119 - which he asked D to refund but it failed to pay.

Subject to receiving this payment, Mr N should surrender the car to Lloyds Bank, to be removed and disposed of at its cost. He should also sign any DVLA forms and other documents that Lloyds Bank may reasonably require to transfer ownership of the car into its name.

I have considered whether it would be reasonable to reduce the amount to be paid to take account of the use Mr N initially had of the car. However against this I have to take account of the upset and inconvenience the non-starting issue has caused him from the outset. I also note that since he has been unable to use the car he has incurred expense in renting another car. On balance, I don't think any deduction is appropriate.

Finally I think the compensation of £350 which Lloyds Bank has paid Mr N in respect of its poor handling of his complaint is not unreasonable in the circumstances.

my provisional decision

For the reasons I've explained, but subject to any further comments and evidence I receive from either Mr N or from Lloyds Bank by 17 October 2018, I intend to uphold this complaint.

I intend to order Lloyds Bank Plc to pay Mr N £4,119, subject to his surrendering the car to the bank, to be removed and disposed of at its cost, and signing any DVLA forms and other documents that Lloyds Bank may reasonably require to transfer ownership of the car into its name.

Lennox Towers
ombudsman