

The complaint

Mr K complains about the quality of a used car that he paid for (in part) using credit provided by Lloyds Bank PLC and he's unhappy with the response he got from Lloyds when he raised a claim under section 75 of the Consumer Credit Act 1974 (CCA).

What happened

Mr K purchased this car in August 2022 when it was about 6 months old with just over 2,300 miles on the clock. The car cost around £25,000 and Mr K part-exchanged a vehicle worth nearly £19,000 and paid the balance using his Lloyds' credit card. Mr K reported faults with the car shortly after collection. These were repaired by the supplying dealer but another issue appeared within weeks – there were multiple error sounds and messages on the instrument cluster about faults with the travel and emergency assist functions.

The dealer said the problem was a known fault with steering wheel sensors. No repair was available and the travel and emergency assist functions were de-activated temporarily, in December 2022, until the manufacturer found a resolution. Mr K says these functions were of particular importance to him, as he drives on the motorway often, and he asked to reject the car and receive a refund in early January 2023. When the seller didn't agree, Mr K raised a claim with Lloyds under section 75.

Lloyds asked for additional evidence, in the form of an independent expert's report. Mr K didn't think this was fair - he says the manufacturer accepted the car was faulty and Lloyds knew this – but he paid £360 for an engineer to check the car and sent Lloyds the inspection report in February 2023. He was unhappy that Lloyds asked the seller to comment and refunded the cost of the report to his credit card - he would have preferred it to go straight into his bank account. He thinks Lloyds delayed things deliberately and should be liable if he incurred additional bank charges or other expenses.

In April 2023 the seller agreed that Mr K could reject the car and offered to refund the full purchase price. Lloyds considered this was a reasonable resolution and declined the section 75 claim. Mr K doesn't think that's fair. He feels Lloyds delayed things to discourage him and/or avoid liability for as long possible and it was wrong to give the seller three weeks to comment on the evidence. He declared the car SORN and says he had to borrow money (from friends and on two other credit cards) to buy a replacement vehicle. He wants Lloyds to refund his additional expenses including credit card interest, road tax and insurance and pay compensation.

Lloyds says it didn't delay things, the approach it took is standard practice with this sort of claim and it wasn't unreasonable to allow the seller to comment and try to agree a suitable remedy. Lloyds froze interest on Mr K's credit card account for six months while it investigated. It also reimbursed the cost of the expert's report and paid Mr K £40 (as a goodwill gesture) for not paying the refund into his preferred account. Lloyds considers Mr K received a fair remedy overall as the seller refunded the full purchase price without a deduction for the use he had of the car.

Our investigator didn't recommend the complaint should be upheld. She didn't think it was

unreasonable for Lloyds to ask Mr K for additional evidence and contact the seller about this. She's satisfied that Lloyds froze interest on his credit card while it investigated and there was no unnecessary delay - Mr K raised his claim with Lloyds in January and the matter was resolved by the end of April 2023. She wasn't persuaded that she could fairly hold Lloyds responsible for costs arising from Mr K's decision to purchase a new car when he did. And, given the seller didn't make a deduction for usage, she thought the resolution offered was fair and it wasn't unreasonable for Lloyds to rely on this and decline his section 75 claim.

Mr K remained unhappy. In summary, he said a deduction for use here would have been about £344 whereas his losses (road tax, car insurance and interest on two third party credit cards) amounted to nearly £750. He feels redress was delayed unreasonably and refers to the Consumer Rights Act 2015 (CRA) section 20(15) which provides "A refund under this section must be given without undue delay, and in any event within 14 days beginning with the day on which the trader agrees that the consumer is entitled to a refund".

He goes on to say he and his family experienced a great deal of distress, inconvenience and anxiety as a result of what happened and he suffered weight loss, an inability to sleep and a rapid decline in overall health, among other things. He thinks all of this could have been reduced or avoided if Lloyds had accepted liability sooner. He asked for an ombudsman to review the matter and comment on Lloyds' business practices - in particular, if it is acceptable that Lloyds took 25 days to contact the seller and failed to accept liability when he supplied the expert's report. He wants Lloyds to compensate him for financial losses and pay compensation totalling nearly £3,000.

Having considered the available evidence, I wasn't minded to uphold this complaint. My reasons weren't quite the same as the investigator's however and I thought it was fair to give the parties the chance to see my provisional findings and respond if they wanted to before I made my final decision. I issued a provisional decision on 5 December 2023. I've set out below (in italics) what I decided provisionally (and why) – this forms part of my final decision.

My provisional decision

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

I can see that Mr K has gone to some trouble to provide very detailed submissions here. I'm going to have to summarise things in my decision - the rules of our service allow me to do this. But I want to assure the parties, if I don't mention every single point that's been raised, it's not because I haven't thought about it. I have considered everything that's been said and sent to us. I'm going to concentrate however on what I consider is key to reaching a fair and reasonable outcome.

Mr K brings his complaint to the Financial Ombudsman Service because he paid part of the purchase price for this car using credit provided by Lloyds. I note that Mr K would like me to comment on Lloyds' business practices generally and I should explain that I'm not a regulator. I don't have the power to tell any financial business how to operate on a day to day basis or punish a business or any individual. My job here is to look at all of the information available about this particular complaint, without taking sides, and consider the merits on a fair and reasonable basis.

I realise Mr K feels strongly about everything that's happened. And I want to be clear at the outset, that I'm looking at whether Lloyds has taken appropriate steps in relation to his

section 75 complaint in this decision - it's not within my remit to require third parties, such as the seller, to do anything.

Broadly speaking section 75 provides that the borrower under a credit agreement has an equal right to claim against the credit provider if there's a breach of contract or misrepresentation by the supplier of goods or services in certain circumstances. I'm required to take taking relevant law (among other things) into account when I make my decision (although I don't apply the law, only a court can do that). I think section 75 is relevant here so I've gone on to consider whether there's been a breach of contract or misrepresentation.

I'm satisfied that this car was required to be of satisfactory quality at the point of sale. There seems to be no dispute now that it was of unsatisfactory quality and there was a breach of contract. So, the remaining issue for me to decide is whether Mr K has received fair redress in all the circumstances.

As far as I can see the car has been collected already at no additional cost to Mr K and the seller refunded the purchase price in full. Lloyds considers this was a reasonable resolution but Mr K doesn't agree. He thinks Lloyds delayed things unnecessarily increasing his distress and inconvenience and he's out of pocket - as he incurred interest on two other credit cards which he used to buy a replacement vehicle and he had to pay for road tax and insurance on this car while it was off the road.

time taken

I'm satisfied that Lloyds responded to Mr K's section 75 claim within a reasonable time. I'm not persuaded it delayed things unnecessarily. And I don't think it was unfair to ask for independent evidence that the car was faulty in this situation. Not every fault found will entitle a consumer to reject goods - repair or replacement may be an appropriate remedy in some circumstances.

I appreciate Mr K may say the manufacturer had already accepted there were faults present and the seller had the chance to repair, but I don't think it was unreasonable for Lloyds to ask the seller to comment. It's likely the seller would have possessed additional information about relevant issues that Lloyds would need in order to be satisfied there was a misrepresentation or breach of contract that it may be liable for under section 75 and what might be an appropriate remedy. It follows, I can't fairly criticise Lloyds for the time taken to investigate or the decision to involve the seller when it did.

financial losses

I'm satisfied that Lloyds has reimbursed the cost of the expert's report that Mr K paid for and I think that was fair. I understand Lloyds also paid Mr K £40 compensation for crediting this refund to his credit card and not his current account - which seems more than reasonable.

Under the CRA, where a consumer is entitled to reject a car on quality grounds they may be entitled to a refund but this amount can be reduced to reflect the use the consumer had of a vehicle. According to the expert's report, Mr K was able to drive this car for over 4,300 miles in 133 days. Mr K says a fair deduction for this use works out at about £350. I'm not sure how he calculated this amount exactly but it seems to equate to about 12p a mile, which doesn't seem unreasonable.

To recap then, in terms of the resolution provided, the seller took the car back and refunded the purchase price in full waiving any deduction for use - which Mr K accepts was worth about £350. Lloyds also froze interest on his account for a time, reimbursed £360 for the expert's report and paid Mr K an additional £40 compensation.

Mr K says he incurred additional costs here - essentially because this car was off the road -

including insurance, road tax and interest on other credit cards when he purchased a replacement vehicle. So I've given some thought to whether those costs were reasonably incurred as a direct result of the breach of contract. It looks as if the independent expert considered this car was in above average condition when he inspected. I accept diagnostic checks revealed multiple electrical fault codes stored and he found travel assist functions, such as cruise control and lane change sensors, weren't working. As I understand it, these were turned off by the dealer to prevent recurring error sounds and messages.

Mr K told Lloyds that the issues were with the travel assist function, the infotainment system and the emergency call function. He says he chose the car with this specific functionality in mind so I appreciate it was probably very frustrating for him when it didn't work. I accept his use of the vehicle might have been impaired somewhat as a result. But I've seen nothing to suggest that the car was unsafe or unroadworthy (or couldn't be driven for some other reason). I can see why Mr K may have chosen to buy a replacement vehicle when he did. On the current evidence however, I'm not persuaded that it would be fair and reasonable to hold Lloyds responsible for any associated costs including insurance, road tax or credit to buy a replacement vehicle.

compensation

I think it's likely Mr K incurred some foreseeable distress and inconvenience as a result of being supplied with a faulty car. Among other things he had to contact several parties to try and resolve things and instruct an expert to provide a report. I'd be minded to find £250 was reasonable compensation for this.

I appreciate it must have been upsetting for Mr K when his family were affected by what happened - but I'm unable to require Lloyds to compensate third parties, such as family members, in this situation. Mr K also reports experiencing significant health issues and I'm very sorry to hear about that. I've got nothing to show that this resulted directly from the supply of this faulty car however and I'm unable to reasonably hold Lloyds responsible.

Working out what's fair in these circumstances isn't a scientific exercise. Taking everything I've seen so far into account, I'm inclined to agree with the investigator that the resolution provided for breach of contract here seems fair overall. And I'm not persuaded that I can reasonably require Lloyds to do anything further.

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 invited the parties to let me have any further comments or new evidence by 20 December 2023. I said I'd review all the evidence available after that and make my final decision.

Mr K has provided a detailed response. In summary, he says:-

- I referred in my provisional decision to the expert finding the car was in above average condition when the expert was referring to its body, interior fluid levels, and mechanical aspects at the start of the inspection and multiple error codes were identified later which mean the car can't be above average;
- Lloyds should have contacted the seller much sooner and the failure to do so caused unnecessary delay;
- the car wasn't safe to drive as he couldn't demist the windscreen and windows because heating, ventilation and air conditioning are operated through the infotainment screen which was randomly crashing and distracting random errors continued to appear - aside from those disabled by the dealer;

- he needed a reliable car daily for school runs and the like and public transport was not feasible so he had no option but to purchase another car and use credit to do so;
- the seller agreed to collect the car on the 22 March 2023 which amounts to agreeing that he was entitled to a refund but he didn't receive this until the 28 April - which is contrary to section 20(15) of the CRA.

As I explained at the start of my provisional decision I'm not determining the outcome of Mr K's section 75 claim here - only a court can do that. I'm looking instead at whether Lloyds provided a fair and reasonable response to Mr K's complaint (which is about Lloyds' response to his section 75 claim) - taking into account any relevant obligations that arise out of the credit agreement, including those under section 75. It's not within my remit to require the seller to do anything. And, for the reasons set out in my provisional decision, I remain of the view Lloyds did not delay things unnecessarily.

My reference to the car's condition was intended to clarify that the independent expert considered it was above average - *aside* from the multiple error codes stored. I don't think every stored fault necessarily means a vehicle is in poor condition – these may include fault codes which were not cleared previously. For the avoidance of any doubt however, I accept this car had faults present and it was of unsatisfactory quality.

I'm not persuaded that random error messages and the lack of an electrical demister means the car was unsafe or unroadworthy. The demist function isn't part of an MOT and, whilst I accept these issues would have been frustrating and inconvenient for Mr K, I can't fairly find they mean he had no option but to purchase a replacement vehicle when he did.

I'm sorry to disappoint Mr K but nothing that he's said or sent to us has persuaded me to change my mind. I remain of the view there aren't sufficient fair and reasonable grounds to uphold this complaint. I realise Mr K will probably feel let down by my decision, but he isn't obliged to accept what I've said - in which case it remains open to him to pursue the matter by any other means available.

My final decision

For the reasons given above, my decision is I am unable to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 17 January 2024.

Claire Jackson
Ombudsman