

The complaint

Mr S complains that NewDay Ltd rejected his claim for compensation under section 75 of the Consumer Credit Act 1974 in relation to a car he says was mis-sold to him.

What happened

In January 2022 Mr S bought a used car, which had been registered in 2018 and had had one previous owner. He used his NewDay credit card to pay £100 towards it (and paid the balance using other payment methods). At the time, he asked the dealership in an email *“Was it previously used as a Lease car, hire car company car or a taxi?”* The dealership told him the answer was no. But then in the following September, the dealership told Mr S that the car actually *“was previously a ... Contract Hire vehicle, which ... is a form of lease.”* Mr S then complained that the vehicle had been misrepresented to him, as he would not have bought it if he had known it was *“ex-lease,”* because he had previously found such cars to be unreliable and to have mechanical faults. He said the dealership had intentionally deceived him. He also said there had been a breach of contract because the car had not been as described. And he also complained about a smell of smoke coming from the air vents, and a rattling sound.

In a series of emails back and forth between Mr S and the dealership, the dealership insisted that there had been no mis-sale, and that Mr S was only arguing about semantics. The dealership said that its use of the term “lease” only referred to how the previous owner had funded his ownership of the vehicle, not how the car had been used – it had not been a rental car with many different drivers, if that was what Mr S had been concerned about. The dealership offered Mr S a modest gesture of good will. But Mrs S did not accept that explanation, and he objected to the dealership introducing the word “rental” into correspondence when he had never asked about whether the car had ever been a rental car. He said this was nothing to do with what he had meant when he had asked if the car had ever been leased, and he argued that this was further evidence of the dealership’s dishonesty. In October 2022 Mr S asked NewDay to refund him the entire purchase price of the car (over £19,000) under section 75 of the Consumer Credit Act.

NewDay did not agree that the car had been mis-sold, nor that there had been a breach of contract. Mr S then brought this complaint to our service about NewDay’s decision. But our investigator decided that NewDay had done nothing wrong, as it had been correct to find that there had been no misrepresentation and no breach of contract. She added that the burning smell and the rattling noise had been repaired and had not returned.

Mr S asked for an ombudsman’s decision.

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 don’t think the dealership’s use of the word “rental” was done in bad faith. I think that they were just trying to make sure that they and Mr S were not talking at cross-purposes, so they

clarified that when they had told him that the car had previously been leased, they were only discussing the financial arrangement used by the previous owner, rather than the purpose the vehicle had been used for.

The real issue in this case is how the car was used before Mr S acquired it. That was important to him because of his previous experience with cars that had proved to have issues. So I can understand why he has been tenacious in his pursuit of an answer. However, there is no evidence that the car was previously used in the manner he fears – other than one possible interpretation of what the dealership told him in a phone call, which is not the only way in which that remark could have been meant. In light of the subsequent clarification, which I accept, I do not think the dealership meant what Mr S has argued it meant.

The rattling noise and the burning smell have now been fixed. So I am satisfied that the car was of satisfactory quality and was not misdescribed or misrepresented, and that the bank was entitled to reject Mr S's claim under section 75.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 14 December 2023. But apart from that, this final decision brings our involvement in this matter to an end.

Richard Wood
Ombudsman