

The complaint

Mr M is complaining that Lloyds Bank PLC hasn't helped him resolve a claim he's made that a car he bought using his Lloyds credit card was misrepresented to him and not as described. He brings the claim under S75 of the Consumer Credit Act 1974 (S75).

What happened

In February 2019 Mr M bought a used car using his Lloyds credit card. The car was around five years old and had travelled around 53,500 miles when he bought it. It was advertised as manufacturer approved. Mr M says, due a technical issue, the dealership wasn't able to provide a copy of the service history when he bought the car, but later provided it. However, when Mr M inspected the history he noticed that the car hadn't had a full service in 2017 and 2018. And he said that one of the conditions for car to have manufacturer approved status is that the dealership would have serviced the car if the service was due.

Mr M tried to resolve the issue with the dealership, but he was unhappy with the proposed resolution. He said it took the dealership around five months to accept there was a misrepresentation. The dealership offered to allow Mr M to hand the car back with a full refund. Alternatively it offered to carry out the service and provide an extra 12 month warranty.

Mr M didn't think these options were fair. He didn't think it was fair to make him have to go through the whole process again of sourcing and buying a car. So he thinks the dealership should source him a replacement itself and provide a car with the manufacturer approved status. Alternatively, he thinks it should carry out the service, provide the warranty and also give a price reduction of around £2,500 to cover the potential liability for any damage that may have occurred due to the incomplete service history.

The dealership maintained its offer was fair. At the same time, this matter was also reviewed by an arbitration service who also concluded that the dealership's offer was fair. Since then the dealership has said it's still will to allow Mr M to hand the car back, but it said it would make a deduction for the car's usage at 45p per additional mile the car has travelled since he bought the car. Mr M remained unhappy with the outcome, so he asked Lloyds to step in under S75. However, Lloyds also concluded that the dealership's offer was fair. But it acknowledged it had delayed processing the S75 claim so offered £50 in compensation for this.

Mr M remained unhappy with the outcome so referred his complaint to this service. I issued a provisional decision partially upholding this complaint and I said the following:

"Firstly, I acknowledge I've summarised Mr M's complaint in far less detail than he's done. I don't mean any discourtesy by this, but it simply reflects the informal nature of this service. I assure Mr M I have considered everything he's sent us. If I've not commented on something, it's not that I haven't considered it. But in this decision I've focused on what I consider to be the key issues. Our rules allow me to do this.

Mr M paid for the car through his Lloyds credit card. S75 sets out that, in certain

circumstances, as the finance provider, Lloyds is jointly liable for any breach of contract or misrepresentation by the dealership. I'm satisfied those circumstances apply here.

The Consumer Rights Act 2015 (CRA) implies a term into Mr M's contract with the dealership that the dealership – and in turn Lloyds – is liable for any losses incurred as a result of anything that it says to Mr M about the car he bought which Mr M reasonably relied upon and induced him into entering into the contract.

In addition to this, the Consumer Rights Act 2015 (CRA) – implied a term into the contract that the goods are to be as described.

There's no dispute that the dealership explained that the car was manufacturer approved. And one of the requirements for the car to have manufacturer approved status is that the dealership will have serviced the car if it's within two months or 1,500 of the next service being due.

In regards to Mr M's car, a partial service was carried out in 2017 and 2018 where the engine oil and filters were changed. But I understand the differential oils, cabin/pollen filter and spark plugs weren't replaced. So I agree the dealership should have serviced the car before Mr M bought it. And this isn't disputed.

So I think the car was misrepresented to Mr M. I also don't think it was as described. This is also not disputed. But the issue for me to decide is whether I think it was fair for Lloyds to say the dealership had made fair offers to put things right. I think it largely was.

The redress available to Mr M is different depending for misrepresentation and breach of contract. I shall consider each point separately.

Breach of contract

As I said above, the CRA implies a term into the contract that the goods must be as described. The car was described as being manufacturer approved, but due to the service issue, it shouldn't have been. I think it's important to highlight here, though, that the issue is that the dealership should have serviced the car before it was sold to Mr M. But the car wasn't advertised as having a full-service history. I appreciate Mr M is unhappy that the car didn't have full services previously. But he wasn't told it would do so. So there isn't a breach of contract or misrepresentation in this regard. I appreciate Mr M thinks the dealership should compensate him for any damage this may have caused to the car. But it doesn't have to do so – subject to the CRA requirement that the car is of satisfactory quality.

However, the inference from the car being described as it was is that the car wouldn't need a service and, given the car hadn't had a full service since 2016, the dealership would have serviced the car before Mr M bought it. And I think this is accepted.

The CRA sets out that Mr M was effectively entitled to ask the dealership to have the car serviced, which the dealership offered to do. I note he thinks the dealership should have replaced the car instead. But the CRA also sets out the dealership can decline to replace the car if, to do so, is disproportionate to other remedies. I think it was fair for Lloyds to think the offer to carry out the service was fair and I don't think requiring the replacement of the car was proportionate to the loss. Further to this, given the car was a used car, it's not generally plausible to replace it with another car of the same age, mileage and specification.

As I said above, I appreciate Mr M is unhappy he would have to go through the inconvenience of sourcing a replacement car. But, I'm satisfied the proposed remedy from the dealership to service the car and give a 12 month extended warranty was fair. So I'm

satisfied Lloyds acted fairly in saying this was a fair remedy to put things right. However, due to the length of time that's passed, I don't think it would be fair or reasonable to require Lloyds to now arrange to service the car.

Having said that, I do note Mr M paid to replace the cabin filter himself. The dealership offered to refund this which is fair. But Lloyds should refund this if the dealership hasn't done so. It should also pay 8% simple interest per year on this from when Mr M paid for it until he gets it back.

Misrepresentation

Goods or services are considered misrepresented where the supplier makes a false statement of fact about them and that statement induces the consumer into entering into a contract they otherwise wouldn't have done. Where this happens, the remedy is to put the consumer back in the position they'd be in if the misrepresentation hadn't taken place.

Mr M says he wouldn't have bought the car, so the correct remedy in these circumstances would be for him to be allowed to return the car and receive a refund of the amount he paid – which is what the dealership offered to do. I appreciate Mr M was unhappy that he'd have to source a replacement car himself. But there's always likely to be some inconvenience in resolving a dispute. And, ultimately, what the dealership offered Mr M is what it was required to do in line with the CRA as it puts him back in the position he'd have been in had the misrepresentation not taken place.

Mr M should still be entitled to hand the car back because of the misrepresentation if he wishes to do so. But I don't think it's fair that he has a full refund of everything he's paid given how long he's had the car and the CRA sets out that the dealership can make a deduction for usage. However, I don't think charging 45p per mile is a fair way to work out a fair deduction for usage as this isn't a fair reflection of the loss in value of the car. I think a fairer way is that Mr M receives back the dealer market value for the car in its current age and mileage.

Mr M should contact the dealer first to process this return if wishes to do so. But if the dealership doesn't arrange for Mr M to hand the car back, Lloyds should step in to process this. However, if Mr M wants to hand the car back I intend to say he should do so within 28 days of accepting my final decision. After this date, it would be at Lloyds' discretion whether to allow him to hand the car back.

I appreciate Mr M has suffered a lot of distress and inconvenience with handling this matter. But I need to think about what Lloyds should be responsible for. As I said, S75 gives Mr M a 'like claim' against Lloyds if there has been a breach of contract or misrepresentation by the dealership. But, I need to think about what losses Mr M would likely be able to recover in court against the dealership when considering what the 'like claim' might look like. I'm mindful when doing this that courts don't typically tend to make awards for non-financial losses such as distress and inconvenience for breach of contract apart from in limited circumstances (which I don't think would be likely to apply here).

Given this I don't think Lloyds needs to compensate Mr M for any distress and inconvenience he may have suffered because of anything the dealership may have done wrong. I'm also satisfied that Lloyds has handled reasonably fairly. I note Lloyds has acknowledged it initially delayed the handling of the S75 claim. But I don't think Mr M has lost out as a result of this because I think the situation would still be the same now even if it had processed the claim when it should have done. So I think the £50 it offered him was more than fair."

Mr M didn't accept my provisional decision. In summary he said the following:

- The dealership told him the car was advertised with a full service history and he maintains it was advertised as such.
- The dealership initially offered to service the car, but this offer was withdrawn when he asked to have the offer put in writing. He thinks it's wrong that the dealership did this.
- He maintains the dealership could and should have offered him a replacement car as there were many other suitable cars available.
- He thinks it's unfair both the dealership and Lloyds have taken the easiest option to just refund all his money.
- He maintains he was told he'd get a manufacturer approved car in immaculate condition so he should be put back in this position – i.e. give him such a car.

Lloyds didn't respond to my provisional 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 Mr M has provided anything significantly different to what he's provided before. So I don't see any reason to reach a different conclusion to the one I reached in my provisional decision.

I do appreciate and understand that Mr M feels strongly about what's happened in this case and how it should be remedied. But ultimately I remain of the opinion that it was largely fair for Lloyds to say the dealership had taken fair steps to put things right. I recognise Mr M feels the dealership and its solicitors have acted in an underhand manner. But, in this decision, I'm only considering Lloyds' actions in its handling of Mr M's S75 claim – i.e. I'm not able to consider the actions of the dealership or its representatives. Lloyds isn't liable for the customer service provided by the dealership. Lloyds's liable for any breach of contract or misrepresentation and I've considered its comments in this respect.

Mr M doesn't feel the dealership offered to put things right because it withdrew the offer to service the car after he insisted the offer be put in writing. But there was no requirement for the offer to be in writing and ultimately the dealership did offer to service the car.

Ultimately, my provisional decision sets out why I think it was fair for Lloyds to say the offer to put things right was fair – with the exception of the charge for usage. Neither party commented on what I said about the fair usage charge. So I see no reason to conclude anything differently regarding this.

My final decision

For the reasons I've set out above, it's my final decision that I partially uphold this complaint and I require Lloyds Bank PLC to do the following:

1. If Mr M wishes to hand the car back, he should be allowed to do so. But don't think charging 45p per mile is a fair way to work out a fair deduction for usage. I think Mr M should receive back the dealer market value for the car in its current age and mileage. Mr M should allow the dealership the opportunity to do this, but Lloyds should step in if he doesn't receive this. If Mr M wants to hand the car back he should do so within 28 days of accepting my final decision. After this date, it would be at Lloyds' discretion whether to allow him to hand the car back.

2. Subject to Mr M providing evidence of paying for this, Lloyds should refund the amount Mr M paid to replace the cabin filter if the dealership hasn't already done so. It should also pay 8% simple interest per year on this from when Mr M paid for it until he gets it back. If Lloyds thinks that it's required by HM Revenue & Customs to deduct income tax from this interest, it should tell Mr M how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax if appropriate.
3. Pay the £50 in compensation it offered Mr M for the delay in processing the S75 claim if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 17 January 2022.

Guy Mitchell

Ombudsman