

The complaint

Mr B complains that John Lewis Financial Services Limited has treated him unfairly in relation to a car purchase.

What happened

In January 2018 Mr B used his John Lewis Financial Services Limited credit card (JLFSL for short) to pay a deposit on a car bought for his wife. Sometime later there became apparent problems with the wheels. So he asked the car dealer to resolve the matter. But he was unsuccessful. So he complained to JLFSL.

JLFSL looked into the matter and has said it didn't consider Mr B's dispute should be successful through either chargeback or Section 75 of the Consumer Credit Act 1974 (CCA for short).

Mr B didn't think this was fair, so he brought his complaint to our service. Our investigator looked into the matter. Overall, she didn't think JLFSL had acted unfairly by declining Mr B's request for a refund. Mr B didn't agree. So the complaint was passed to me to decide.

On 30 May 2024 I issued a provisional decision not upholding Mr B's complaint. Both Mr B and JLFSL have received 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'm not persuaded by Mr B's further arguments in this matter. Accordingly I see no persuasive reason to deviate from my rationale as set out in my provisional decision and broadly repeated below. I shall address Mr B's arguments under the paragraph entitled 'further arguments.'

I should make very clear that this decision is not about the car dealership Mr B used which isn't a financial services provider and doesn't fall within my remit regarding chargeback or Section 75. Whatever the issues there maybe with the car and just because Mr B says he has lost out here, it doesn't necessarily follow that JLFSL has treated Mr B unfairly or that it should refund him. And this decision is solely about how JLFSL treated Mr B. I hope this point is clear.

There's no dispute that Mr B used his JLFSL card to pay the deposit on the car. So I don't think JLFSL did anything wrong by charging it to his account.

chargeback

In certain circumstances, when a cardholder has a dispute regarding a transaction, as Mr B does here, JLFSL (as the card issuer) can attempt to go through a chargeback process which is run by the Card Network (here Mastercard). I don't think JLFSL could've challenged

the payment on the basis Mr B didn't properly authorise the transaction, given the conclusion on this issue that I've already set out.

The chargeback rules have strict time limits including a 540 day 'long stop rule'. Mr B didn't take his complaint to JLFSL until considerably after the time limit had passed. So I don't think Mr B has lost out here by what JLFSL did because a chargeback could never have been successful because it was considerably outside the time limit set by the Card Network.

CCA

A business such as JLFSL can only be held responsible under S75 of the CCA if certain prerequisites are met *and* if there is breach of contract or misrepresentation of the contract and if there is that it means that Mr B has lost out. Our Investigator concluded that the prerequisites for a claim were met but didn't think there was a breach of contract, or in other words they thought the car was of satisfactory quality when the car was purchased.

The CCA introduced a regime of connected lender liability under Section 75 that afforded consumers ("debtors") a right of recourse against lenders ("creditors") that provide the finance for the acquisition of goods or services from a third-party merchant (the "supplier"). S75 says:

"If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor."

I do appreciate Mr B has funded the deposit here from his JLFSL credit card. But simply funding a transaction doesn't necessarily make someone a contractor to a contract or entitled to represent other parties in a claim on that contract. I note particularly the recent case of *Cooper v Freedom Travel Group Ltd and another (t/a Halifax) [2022] EWCA Civ 1557 (25 November 2022)* and particularly the comments of Davies LJ who concluded that *"the word 'debtor' in section 75 has a plain and unambiguous meaning, namely the contractual debtor"*.

Here I can see the order form for the purchase and the 'customer name' listed is Mr B's wife and she signs that document solely. I can see on the document marked receipt the customer is similarly named as Mr B's wife. I can see Mr B has said he bought the car for his wife and refers to it as "my wife's car." In fact nowhere on the documentation is Mr B listed as being the purchaser of the car. The order form is persuasive to me, the car dealer's customer here was listed as Mrs B and she signed that document as such.

For Mr B to be able to bring a 'like claim' against JLFSL he has to be able to bring a claim against the car dealer. But he can't here as he's not party to the contract of sale of the car. Funding the transaction is not enough, you have to have a contractual right to bring a claim against the car dealer. And if Mr B can't bring a claim against the dealer then he cannot bring a S75 'like claim' against JLFSL.

As the prerequisites for a claim under S75 have not been met then a s75 claim cannot be successful even if the car was of unsatisfactory quality. Accordingly there is no need to decide whether the car was of satisfactory quality or not at the point of sale. I appreciate that Mr B will be unhappy as this issue hasn't been raised to this point in this long running dispute. But I can only conclude a complaint about a s75 claim in Mr B's favour if the prerequisites for a s75 claim are in place. And clearly they are not in place here.

I can see JLFSL paid Mr B £40 as a gesture in relation to the customer service provided. Considering what happened here I think that's a fair amount.

Further arguments

Mr B has said in response to my provisional decision that the dealership told him to put the car in Mrs B's name. I'm not persuaded that this makes a difference here. Ultimately Mr B can't make a claim as he's not the contractual debtor here as his wife is listed as the purchaser of the car and Mr B refers to it as "*his wife's car*." I think it unlikely that such a car dealership would be sufficiently aware of the debtor creditor supplier issue in the first place and secondly be sufficiently concerned about the liabilities of JLFSL to give this recommendation to Mr B to negate such a liability. I think it's likely it said this for the reasons Mr B has given regarding the personalised number plate as Mr B has pointed to.

Mr B has reiterated many arguments about the unsatisfactory quality of the car. I appreciate his comments on this. Nevertheless JLFSL can't be held responsible for this matter due to the requirements of the Section 75 not being met for the reasons given.

Mr B says he's taken advice and that there's definitely an unsatisfactory quality issue here. He may be correct and he's entitled to pursue such a claim against those responsible for the car's quality such as the dealership that sold the car and potentially the manufacturer. But I've decided he cannot hold JLFSL responsible for this for the reasons given.

Mr B says I've not considered his arguments about the quality of the car. He's broadly correct in this. And this is because as he can't hold JLFSL responsible for the car in any event for the reasons given there is nothing to be gained by then considering whether the car was of satisfactory quality or not. As I've said already "*As the prerequisites for a claim under S75 have not been met then a s75 claim cannot be successful even if the car was of unsatisfactory quality.*"

Mr B says a final decision won't be the end of this matter for him. Mr B is free to not accept this decision and continue with his dispute against any parties he sees fit. However this decision does conclude this service's involvement in Mr B's dispute with JLFSL.

So having considered everything here my decision is that this complaint should not be successful.

My final decision

For the reasons set out above, it is my decision that I should not uphold the complaint against John Lewis Financial Services Limited. It has nothing further to do in this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 July 2024.

Rod Glyn-Thomas
Ombudsman