DRN-5174982

The complaint

Mr L complains about NewDay Ltd's response to his claim made under section 75 of the Consumer Credit Act 1974 ("section 75"), after he used his credit card to fund, in part, the purchase of a car. He says that the car was not of satisfactory quality. NewDay Ltd trades in this case under its Pulse brand.

What happened

In May 2023 Mr L bought a used car for a total price of £6,595. He paid £100 using his Pulse credit card and the balance from an account he has with a different provider.

The car was nearly eight years old and had a recorded mileage of around 80,000 miles. It came with a limited warranty.

In June 2023 Mr L says he noticed that the car's air conditioning was not working as it should. He paid a total of £399.16 to check and replace the condensing unit and to regas the system.

In August 2023 Mr L says the car over-heated, and it was towed back to Mr L's home. He returned it to the dealership, which carried out repairs. They were not completely successful, however, and the problem repeated itself. This time, the dealership directed Mr L to arrange repairs under the warranty. He did that, but had to contribute £76.81 from his own funds.

In September 2023 Mr L noticed that one of his tyres was losing pressure. This was because a sensor in the tyre pressure monitoring system had been poorly fitted. Mr L paid £89 for a repair.

In October 2023 the car's engine overheated. Mr L arranged a diagnosis (at a cost of £163.91), which concluded that a replacement head gasket was needed. The cost of replacement was in the region of £2,000. Mr L returned the car to the dealership, so that it could carry out repairs. In the course of those repairs, the dealership identified that there was also timing chain damage. The dealership initially said that it would not repair that damage. It later said that it would, but that it thought Mr L should make a contribution to the cost.

The dealership then said that it would not repair the car after all. Instead, it would keep it and compensate Mr L by providing him with a refund based on the cost price less deductions for the use Mr L had had of the car and the cost of repairing bodywork damage which the car had suffered while it was in Mr L's possession.

No agreement was reached between Mr L and the dealership, and he referred the matter to Pulse. It processed a chargeback for the £100 Mr L had paid using his credit card, but did not initially consider his claim under section 75. When it did so, it concluded that the dealership had made a reasonable offer to Mr L and so did not uphold the claim. It appears to have assumed – incorrectly as it turns out – that Mr L had accepted that offer.

Mr L referred the matter to this service. One of our investigators considered what had happened and issued two assessments. The second was made following responses to the first and recommended that Pulse refund the full price of the car, the cost of the repairs to the air conditioning and the cost of repairs and diagnosis which Mr L had paid for in respect of the head gasket issue. The investigator recommended that the cost of bodywork repairs be deducted from the total. This gave a total of £5,363.88, to which interest should be added.

Pulse noted the damage to the bodywork and suggested that this might be linked to the head gasket failure. It did not agree to the investigator's recommendation.

Mr L questioned the fairness of the deduction in respect of the bodywork damage. He noted that the deduction was more than double the estimate he had received for the repairs. He also provided evidence that the damage had been incurred after the issues with the head gasket had arisen. The damage was to the rear of the car. He also noted, based on quotes for the car provided by online valuation tools, that the value of the car with the bodywork damage was not significantly different from its value without that damage.

As no agreement was reached about how the complaint should be resolved, the case was passed to me for further consideration.

I considered Mr L's complaint and issued a provisional decision in which I said:

One effect of section 75 is that, where a credit card is used to pay for goods or services and the buyer has a claim for breach of contract or misrepresentation against the supplier of those goods or services, he can bring a like claim against the credit card provider. It is not in dispute that section 75 applies here. The necessary relationships between the dealership, Pulse and Mr L are all in place, and the necessary financial conditions are met.

I should add that it does not matter that Mr L used his card to pay only a small proportion of the total price of the car, nor that he had other potential means of redress – against the dealership or the other bank involved. Legally, he is entitled to bring the same claim against Pulse as the claim he has against the dealership. I do note however that Mr L has recovered £100, since Pulse agreed not to re-debit the £100 in the chargeback claim.

I have therefore considered Mr M's dealings with the dealership.

The Consumer Rights Act 2015 says that a consumer contract for the sale of goods should be read as including a term that goods will, amongst other things, be of satisfactory quality. An item is of satisfactory quality if it meets the standard a reasonable person would expect, taking into account all relevant circumstances. In this case, I think the relevant circumstances include the car's price, age, and mileage.

I would not expect a car of the age and mileage of Mr L's car to be in perfect condition; it is to be expected that some items will have suffered wear and tear and will need attention. In this case, however, the car suffered a serious engine failure after only a few months. The dealership attempted repairs but was, it appears, unable to complete them. And the expected cost of those repairs was a significant proportion of the price of the car. Indeed, it may be that the dealership took the view that it was not economically viable to repair the car.

There has been no expert independent inspection of the car. That is not a criticism of anyone involved, and I believe it is clear from the background why that is. I believe however that it is also clear from that background that the car had significant issues within a few months of Mr L's purchase of it. The dealership's offer of settlement was expressly "without prejudice" (meaning it was not an admission of liability, but an attempt to resolve the

dispute). Nevertheless, I think there is sufficient evidence for me to conclude that, by October 2023 at the latest, the car was not of satisfactory quality.

A further effect of the Consumer Rights Act is that, where defects in goods become apparent within six months of purchase, it is for the supplier to show they were not present at the point of sale. Given the history of Mr L's ownership of the car, I think it is reasonable to conclude that the defects were present at sale. That is, the car was not of satisfactory quality when he bought it.

I must therefore consider what a fair remedy is. The Consumer Rights Act to allows for a range of remedies, including the return of goods, a reduction in price, repairs and replacement. And the usual remedy where there is a breach of contract is to put the parties in the position they would have been if the contract had been performed. If the contract had been performed here, Mr L would now be the owner of a car of satisfactory quality – including having a functioning head gasket and timing chain.

Mr L has returned the car to the dealership – although that was largely driven by the dealership's actions. His complaint can therefore only be properly remedied by payment of compensation which takes into account the car's return and events while he was in possession of it.

The main element in calculating fair compensation is the price of the car itself. So that sum – £6,595 – should be my starting point.

In addition, Mr L spent money dealing with the overheating issue (£76.81 in August 2023) and the head gasket diagnosis (£163.91). Both were linked to the major engine failure. He also spent £399.16 having the air-conditioning fixed. As this was an advertised feature of the car, I believe that should be reimbursed as well. And a tyre needed repairing (at a cost of £89) because its TPMS sensor had been incorrectly fitted. In my view, Mr L should be reimbursed for all these items. Although the air-conditioning and tyre issues were relatively minor and could be fixed, they are still matters which meant the car was not of satisfactory quality.

I turn now to any deductions which should be made from Mr L's compensation. It would be usual to make a deduction based on the mileage difference from the time of sale until the car is returned. In part, that is to recognise depreciation, but it also reflects the use the owner of the car has had. In this case, Mr L used the car for around 1,400 miles. The dealership's offer made a deduction based on 30p a mile, and I agree that is reasonable. That amounts to £420.

The final issue is whether any deduction – and, if so, how much – should be made to reflect the bodywork damage. I should say first of all that I am satisfied it was unconnected to the mechanical issues I have described.

Where a car (or any other item) is returned with damage for which the owner is responsible, it is usually fair for a deduction to be made to recognise that damage. It would usually be calculated by reference to the cost of repairs or the reduction in value of the item as a result of the damage.

In this case, however, Mr L has provided evidence that the value of the car without the bodywork damage (but with outstanding mechanical damage) is around £1,000. Its value taking the bodywork damage into account is a little over £500. He also says that there is no current record of the car at DVLA – suggesting that the dealership has sold it for scrap, rather than repairing it and selling it to a new driver. And, he suggests, it is unlikely that the car's scrap value would have been affected by minor bodywork damage.

That is, in my view, a persuasive argument. If the mechanical repairs were uneconomic for the dealership, the car's value was not affected by the bodywork damage. I will of course consider any further evidence on this point (including any information from the dealership about the fate of the car) before I issue a final decision.

My current view therefore is that appropriate compensation in this case should be calculated as follows:

Sale price	*£6,595.00*	
Plus: Air conditioning	*£399.16*	
Overheating	*£76.81*	
TPMS	*£89.00*	
Diagnosis	*£163.91*	*£7,323.88*
Less use @30p a mile		*£420.00*
Total		***£6,903.88***

In addition, Pulse should pay interest on the sale price from 29 October 2023 (when the car was returned) to the date of payment and on the other expenses I have identified from the date Mr L paid them until the date of reimbursement. Interest should be calculated at 8% a year simple.

In addition, I take the view that Pulse could have handled this matter rather better than it did. It has acknowledged that it should not have made a chargeback request. But the effect of that was that it did not address the section 75 claim until much later than it did. And when it did do so, it proceeded on the basis that Mr L had already received compensation, when that was not the case. In my view, Pulse should pay Mr L a further £250 to reflect that. In saying that, I have taken into account the £100 which it has already paid.

It is not for me to say whether Mr L does in fact have a claim against the dealership. Nor is it for me to decide whether he has a claim against Pulse under section 75. What I must do is decide what I consider to be a fair resolution of Mr L's complaint about Pulse, having regard, amongst other things, to any relevant law – including the Consumer Rights Act and the Consumer Credit Act.

Mr L indicated that he was prepared to resolve the complaint on the basis set out in my provisional decision. Pulse did not respond by the deadline of 20 November 2024. I have therefore reviewed the position.

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.

As neither party has provided me with any further evidence or arguments to consider, I do not believe there is any good reason to change the view I reached in my provisional decision. In saying that, I stress that I have reviewed the case in full before issuing this final decision.

My final decision

For these reasons, my final decision is that, to resolve Mr L's complaint in full, NewDay Ltd should pay him:

- £6,903.88, as calculated above;
- interest on the sums I have listed above, calculated in the way I have set out; and
- £250 in recognition of the inconvenience caused and the distress Mr M has suffered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 25 December 2024.
Mike Ingram
Ombudsman