

The complaint

Mr P complains that Clydesdale Financial Services Limited refused to let him reject a faulty car.

What happened

On 30 May 2019 Mr P acquired a second-hand car costing £6,000 funded by a deposit of £1,000 and the balance with a conditional sale agreement. It was some six years old and had covered 54,077 miles. The car was sold by a main dealer, which I will call T, and came with an 'assured-used' status.

Mr P says he encountered problems from the outset and has listed the following faults:

- Major Engine Failure
- Brake Pads
- Brake Discs
- Clutch
- Spark Plugs
- Ignition Coil
- Battery
- Aux Belt
- Rear Right Tyre
- Boot Seal

On 26 June Mr P took the car to a third-party garage I will call D and it sent him an email which reads: *"the inner brake pads are sticking in the housing, the brake discs need replacing as they are metal to metal. There is no broken sensor, it's the ABS sensor (melted) in part of the discs, that's why they are so expensive. With very limited breaking ability and a slipping clutch, I advise it should not be driven until essential repairs are completed."*

Mr P says he took the car back to T immediately, though I am not aware of the precise date, and requested a repair, but it delayed booking the car in due to a shortage of staff. He says it refused to accept the car was faulty and he obtained three independent reports. He says that T only then repaired three out of the 10 faults.

Mr P contacted Clydesdale on 2 September 2019 and explained that the car had suffered from several faults and had been recently towed back to the dealer. He has submitted a copy of a letter date 9 September to Clydesdale in which he asked that he be allowed to

reject the car. He said he was entitled to automatic rejection even through 30 days had passed due to him not having 30 days' use of it.

Clydesdale says its records show that Mr P contacted it on 2 September 2019 and sent an email on 16 September asking that he be allowed to reject the car. It arranged for the car to undergo an independent inspection. The inspector examined the car on 2 October 2019 and concluded that the repairs had been successful and the car was fault free. He said the car couldn't be driven due to it having no number plates or fuel so he couldn't road test it.

Clydesdale didn't consider rejection was merited and offered Mr P £50 for the distress and inconvenience he had suffered. Mr P brought his complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. He said that the issues appeared to be due to wear and tear and the independent inspection showed they had been repaired.

Mr P didn't agree and said the car was low mileage one owner car with a full-service history sold to him by a large franchised dealership. It had been sold to him at a premium price with an assured-used status which give him reason to believe it was in reasonable working order. He didn't consider that a reasonable person would expect the car to suffer from dangerous wear and tear including an undiagnosed engine noise that resulted in total engine failure within a few weeks.

He said that he had reported many faults in the first week and he was entitled to reject it. Mr P said the bank failed to protect him and its investigation process was neither timely nor helpful. He believed T had used delaying tactics to avoid its responsibilities and had been very inefficient. He had submitted his notice of rejection within 30 days the car was available to him. He referred to three independent garages confirming the faults. T had not properly addressed these faults having reluctantly inspected the car on four occasions.

The complaint was taken over by a new investigator who asked Mr P for copies of the independent reports he had referred to and any job cards or details of visits to T. Mr P confirmed he had these reports but didn't supply them. He said T had replaced the battery on one occasion after the car had had to be recovered three times. T had agreed to replace the rear disc pads on 6 August 2019, but then the car had a major engine failure. He had not been provided with details of the work done by either T or another garage.

A second view was issued by the new investigator who noted the email from the local garage and the report from T which had only one item marked as red, the battery and other items, the offside rear tyre, aux belt, rear pads, brake shoes/drums (front discs) and brake discs (rear brake discs) were recorded as amber. He said T did eventually agree to minor brake repairs, replacing the rear discs and the battery on the car.

He saw no reference to a clutch problem although Mr P had provided an estimate to have it replaced date 12 August 2019. He could see no evidence of a major engine failure. He also noted Mr P was kept mobile with a courtesy car whenever his was in for repair. The independent report had confirmed there were no faults and any repairs which had been made were satisfactory.

Our investigator noted that despite the general reassurance provided by T and its 75-point pre-sale check the car was six years old wear and tear was to be expected. It had passed its MOT on 1 May 2019 and by October 2019 Mr P had been able to cover 2,379 miles. Overall, he didn't consider he could recommend the complaint be upheld.

Mr P didn't agree and said his right to reject had not been considered. He maintained the car was unsatisfactory and not fit for purpose when he acquired it.

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.

Where necessary and / or appropriate, I reach my decision on a balance of probabilities – that is, what I consider is most likely to have happened in the light of the available evidence and the wider surrounding circumstances.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point raised by Mr P or Clydesdale, it's not because I've failed to take it on board, but because I don't think I need to comment on it in order to reach what I think is the right outcome.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

The finance agreement, that is the conditional sale agreement, in this case is a regulated consumer credit agreement. As such this service is able to consider complaints relating to it. Clydesdale is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The relevant law says that under a contract to supply goods, there is an implied term that "*the quality of the goods is satisfactory*".

The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and the mileage at the time of sale and the vehicle's history.

Under the relevant law the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

I asked Mr P for copies of any independent reports he had obtained and a detailed timeline of events. No reply was received. I also asked Clydesdale if it had received the letter Mr P sent on 9 September 2019. It said it had no record of receiving it. The bank said that the loan had been repaid in August 2020 after a hearing in the civil court.

Having given consideration to the evidence and the arguments put forward by both parties I do not consider I can uphold this complaint. I will explain why.

Mr P has made extensive legal arguments in pursuit of his complaint for which I thank him, but I lack the supporting evidence to allow me to uphold it. I have the date he acquired the car and the date he sent a letter rejecting it which was more than 30 days after acquisition. I have taken note that this letter wasn't received by the bank. However, leaving that to one side I have no details of when the car was unavailable to Mr P in the first few months which would allow me to say whether or not he was in the window of the short term right to reject.

Without this I cannot say if the rejection fell within 30 days. I have noted Mr Ps rejection document sent by email on 16 September requesting he be allowed to reject the car, but which doesn't refer to his previous letter date 9 September asking for the same thing.

Nor can I say there was a fault which merited rejection. Mr P has told this service about various issues, but there is not the evidence to support his claims. I have seen an email from a local garage about the brakes, but that contains little detail and doesn't set out the cause of the fault. Set against that is the MOT carried out in May 2019 and the report by T. As such I cannot say that the email is strong enough to establish there was a fault at the point of sale that would merit rejection.

Mr P has mentioned other independent reports, but despite being asked on several occasions he has not let this service see them. That is regrettable, but I have to base my decision on the evidence as presented to me.

The only clearly independent report I have seen is the one Clydesdale commissioned. I would explain that the fact it was commissioned by Clydesdale does not undermine the objectivity of the inspector. He was employed by a reputable company specialising in examining and reporting on cars.

His conclusion is that the car had been repaired and was in a fit state. He wrote: "*We would conclude based on the visible evidence we consider the vehicle does appear to have been repaired successfully, although we were unable to road test the vehicle at the time of our inspection as no number plates were fitted and there was no fuel within the vehicle.*"

I appreciate he didn't test the car while being driven, but I don't consider he or the bank can be held responsible for that. It was open to Mr P to ensure that it was ready to be driven.

In summary, I cannot say that the car was faulty at the point of sale to such an extent that would merit rejection and I cannot say that the rejection request was made within 30 days. The car was repaired by T and it was established that it was fit for purpose by the independent inspector. Therefore, on balance, I do not consider I can uphold this complaint. I would add that the bank has paid Mr P £50 which I consider to be reasonable.

My final decision

My final decision is that I don't think Clydesdale Financial Services Limited needs to do anything to settle the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 2 April 2021.

Ivor Graham
Ombudsman